

TERMINATION OF PARENTAL RIGHTS
STIPULATION/NO CONTEST PLEA TO GROUNDS TPR COLLOQUY

Hon. John J. DiMotto

- I. Obtain recitation of the discussions from all counsel.
- II. Colloquy with Parent.
 - A. Do you understand what “Grounds” are alleged?
 - B. Do you understand the consequences of the decision to stipulate to “Grounds” for the TPR?
 - C. What is your Decision?
- III. Inquiry with Parent.
 - A. Swear Parent.
 1. Biographical data: name, address, d.o.b.
 2. Marital status.
 3. Education.
 - a. Last grade completed.
 - b. Degree.
 - c. Read and write English.
 - d. Ever in Special Ed?
 4. Have you read, or had read to you, the TPR Petition?
 - a. Have you discussed it with counsel?
 - b. Do you understand Petition?
 5. Are you legal parent of child?
 6. Do you currently take any prescription medication?
 7. Are you under influence of any alcohol or other drugs?
 8. Have you consumed ANY alcohol or other drugs within the last 24 hours?
 9. Have you ever been treated for any mental illness?

10. Are you currently experiencing any mental or emotional problems today that would interfere with your ability to answer questions right now?
11. Have you discussed your decision with your lawyer?
12. Do you want more time to discuss your decision with your lawyer?
 - a. If yes, pass case or grant adjournment to another date.
13. Do you understand that in stipulating/no contest plea to “Grounds” you are giving up the following rights:
 - a. Right to Jury Trial as to “Grounds” –5/6 Verdict.
 - Do complete waiver colloquy.
 - b. Right to Court Trial.
 - Do complete waiver colloquy.
 - c. Right to see, confront and cross examine State’s witnesses.
 - d. Right to subpoena and present witnesses.
 - e. Right to Testify.
 - f. Right to Silence – although it can be used against you.
 - g. Right to make State prove case by clear convincing and satisfactory evidence.
14. Do you understand that in stipulating/no contest plea to “Grounds” you are not stipulating/agreeing to termination of your parental rights?
 - a. You maintain the right to challenge termination of your parental rights as being in the BIC in the Disposition Phase of this case.
 - b. You are only conceding that there is clear, convincing and satisfactory evidence as to the grounds alleged by the State.
15. However, do you understand that by stipulating/no contest plea in the “Grounds” Phase, that you could lose your parental rights at the Dispositional Hearing?
16. Do you understand that upon a finding that “Grounds” exist for TPR that the law requires the Court to find that you are unfit and the matter will be set for a Dispositional Hearing?

17. Do you understand that in the Disposition Phase, the Court makes the final decision?
18. Do you understand that in the Disposition Phase, the prevailing factor in the Court's decision will be what is in BIC?
19. Do you understand that in the Disposition Phase, in deciding what is in the BIC, the Court will consider all the evidence and decide upon the disposition?
 - a. The disposition could be TPR with:
 - Adoption.
 - Sustaining Care,
 - Guardianship under 48.977.
 - b. Dismissal with:
 - Continuation of CHIPS order.
 - Guardianship under 48.977.
 - Guardianship under Chapter 54.
 - Placement with Fit and Willing Relative.
 - Long Term Foster Care/Residential Care.
 - Outright Dismissal.
20. Do you understand that if "Grounds" are established in the Fact Finding Phase and if in the Dispositional Phase the Court finds that it is in the BIC that your parental rights be terminated that you will lose your constitutional right to be a parent?
21. Have you discussed these rights and consequences with your lawyer?
22. Go over the "Grounds" in the petition and determine if parent understands them.
23. Have you talked to anyone about your decision to stipulate/no contest plea to "Grounds?"
24. Do you understand the role of the GAL in this case?
25. Have you had discussions with the GAL about this case?
26. How long have you been considering stipulating/no contest plea to "Grounds?"
27. Has your lawyer gone over all of these rights I just went over with you before today's proceeding?

28. Have you talked to a counselor, social worker or therapist about your decision to stipulate/no contest plea to "Grounds?"
29. Has anyone at all, including your lawyer, offered you money or promised you anything in exchange for you to come to court today and stipulate/no contest plea to "Grounds?"
30. Has anyone at all, including your lawyer, threatened you or coerced you in any way to get you to stipulate/no contest plea to "Grounds?"
31. Do you have any questions about what you are doing?
32. Are you at all unclear about any aspect of what you are doing today?
33. Do you want any more time to think about what you are doing?
34. Do you want any more time to talk with your lawyer?
35. Is there anything that you feel you need that you do not have that would help you make the decision to stipulate/no contest plea to "Grounds?"
36. Have you had enough time to go over this case and your decision today with your lawyer?
37. Have you discussed possible mitigating circumstances and defenses to the facts of this case with your lawyer?
38. Are you satisfied that you have sufficiently discussed and understand the nature of the allegations in this case, possible mitigating circumstances with respect to the facts in this case and possible defenses to the allegations with your lawyer?
39. Are you satisfied with your lawyer and the representation that your lawyer has provided to you?
40. Are you at all confused about anything you are doing here today?
41. Is there anything about these proceedings that you do not understand or any questions that you would like to ask me about these proceedings?
42. Are you making your decision to stipulate/no contest plea to "Grounds" freely, voluntarily, intelligently and understandingly after having thought about everything we have discussed today and after having consulted with your lawyer?

43. Understanding all of the rights that you are giving up today, do you still want to stipulate/no contest plea to “Grounds.”

IV. Inquiry of Parent’s Lawyer.

A. Interaction with client:

1. Have you gone over the issue of stipulating/no contest plea to “Grounds” with your client?
2. Have you gone over the Two Phases of a TPR proceeding with your client?
3. Have you gone over the consequences of a finding of “Grounds” with your client?
4. Have you discussed potential mitigating circumstances and defenses to the “Grounds” allegations in the petition?
5. Are you satisfied that your client understands the potential mitigating circumstances and defenses?
6. Are you satisfied that your client understands the “Grounds,” consequences that may flow from a finding of the “Grounds” and the interrelationship between client’s conduct and the “Grounds” and consequences?
7. Did you go over all of the rights that your client has and is giving up by stipulating/no contest plea to “Grounds?”
8. Are you satisfied that your client understands all of the rights your client has and is giving up by stipulating/no contest plea to “Grounds?”
9. Are you aware of any threats, promises or coercion that has been brought to bear on your client?
10. Are you satisfied that your client is stipulating/no contest plea to “Grounds” freely, voluntarily, intelligently and understandingly by your client?
11. Do you believe that this decision to stipulate/no contest plea to “Grounds” as opposed to contesting the allegations in the Petition is in your client’s best interests?

- V. Inquiry of DA.
 - A. Determine if any other questions for parent.
- VI. Inquiry of Social Worker from BMCW.
 - A. Has any man been adjudicated father?
 - B. Has any man filed a Voluntary Acknowledgement of Paternity?
 - C. Has any man filed a Declaration of Paternity?
 - D. Does the ICWA apply?
 - E. Has an adoptive parent been identified?
- VII. Inquiry of GAL.
 - A. Determine if any other questions for parent.
 - B. Recommendation of GAL.
- VIII. Court Findings Regarding Acceptance of Stipulation to “Grounds.”
 - A. The Court approves the waiver of the parent’s right to contest the Petition to Terminate Parental Rights; and
 - B. The Court approves the stipulation/no contest plea to “Grounds” made by the parent; and
 - C. The Court finds that this waiver and stipulation/no contest plea is being made freely, voluntarily, intelligently and with full understanding of the nature of the proceedings, potential consequences of the decision and all of the rights being given up; and
 - D. The Court accepts the waiver and stipulation/no contest plea to “Grounds.”
- IX. Factual Basis for “Grounds.”
 - A. Obtain a factual basis that supports the “Grounds” alleged in the Petition by testimony of a witness.
 - B. Obtain an assent from the parent to the use of those facts and ask whether they are substantially true and correct.

X. Findings of Fact and Conclusion of Law.

- A. The Court finds that there is a factual basis for the allegations in the Petition and,
- B. Based on the parent's waiver of the right to contest the allegations in the Petition which the Court has accepted and,
- C. Based on the entry of the parent's stipulation/no contest plea to "Grounds" which the Court has accepted,
- D. The Court now finds that the "Grounds" for TPR have been proven by clear, convincing and satisfactory evidence.
- E. The Court further finds, based on the finding of "Grounds," and pursuant to 48.424(4), that the parent is unfit.

XI. Dispositional Phase.

- A. Court can delay for no more than 45 days if all parties agree or court report is not ready or,
- B. Upon a showing of "good cause" under 48.315.
- C. BIC is the "polestar" in the dispositional phase.

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